

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 339 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHAH DM DIED BY HIS HEIRS JAYABEN WD/O DAMPDARDAS M.

Versus

INDRAVADAN RATILAL VORA

Appearance:

MR NAGIN N GANDHI for Petitioners
MR SV RAJU for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/03/2000

ORAL JUDGEMENT

#. This Revision Application is filed by the original plaintiff who had filed Regular Civil Suit No 491 of 1976 in the court of the learned Civil Judge (SD), Bhavnagar for getting possession of the suit premises.

#. The case of the plaintiff in the said suit was that the defendant was in arrears of rent for more than two months at the rate of Rs.25.75 and that though a demand notice was served, he has not paid the rent. The other ground in the suit was that the defendant was residing out side Bhavnagar for more than 15 years and that he was not using the premises let out to him. The next ground was that the defendant has handed over the possession of the suit premises to his mother and that he had also prayed for a decree on the ground of bonafide requirement. On the aforesaid grounds the plaintiff filed the aforesaid suit.

#. The defendant appeared in the suit and filed his written statement at exh.9 It was stated that the standard rent should be only Rs.17/- per month That he personally went to the plaintiff for paying the rent but he refused to accept the same. Therefore, he had sent MO for Rs. 116/- which the plaintiff refused to accept. Therefore, he sent another MO to the learned advocate of the plaintiff and the advocate also refused to accept the same. That he was ready and willing to pay the rent. It was also pointed out by the defendant that his mother is very old and therefore, it was not possible for him to take the mother with him wherever he goes in connection with his job which was transferable. He also denied the claim of the plaintiff regarding getting the possession on the ground of bonafide requirement.

#. The defendant also filed a separate Application being Misc. Application NO. 191 of 1976 under the provisions of section 24(2) of the Bombay Rent Act on the ground that the opponent who is the landlord of the suit premises and his son had, without any sufficient reason has withheld the essential supplies/services enjoyed by the tenant. Accordingly the suit as well as the aforesaid Misc Application were heard together by the Trial Court. The Trial Court, after recording the evidence of the parties and after hearing the arguments of both the sides came to the conclusion that there was no substance in any of the grounds raised by the plaintiff for possession. It was also found that there was no substance in the application of the defendant-tenant being Misc. Application NO. 191 of 1996 which was filed under section 24(2) of the Rent Act. Accordingly the Trial Dismissed the suit as well as the application of the defendant-tenant by a common judgment.

#. Aforesaid judgment of the Trial Court was carried further by the landlord by way of appeal being Regular

Civil Appeal No. 121 of 1983. The learned Extra Assistant Judge, Bhavnagar by his judgment and order dated 11.9.1984 dismissed the same. Aforesaid order of the Appellate Court is impugned in this revision application.

#. At the time of hearing of this application, it was argued by Mr. Gandhi learned advocate for the petitioner that the petitioner had led ample evidence to prove his bonafide requirement and that the defendant was not using the suit premises and therefore, the decree for possession was required to be passed in his favour.

#. So far as the question about the bonafide requirement is concerned. the learned Appellate Judge has considered said aspect in para 6 of his judgment. It has been found by the learned Appellate Judge that the need of the plaintiff is not reasonable and bonafide. It has been found that the plaintiff is already having possession of one additional room on the ground floor but the same is not used by the plaintiff. The learned Appellate Judge has discussed the premises available with the plaintiff. It was found however, that there are 7 family members in the plaintiff's family. That there is a large size room small room, kitchen, osri and bathroom on the first floor. It was also found that initially the defendant was also in possession of a room on the ground floor but the defendant had handed over the same to the plaintiff. Considering the said evidence it was found that the requirement of the plaintiff was not bonaifde. It was found that considerable hardship will be caused to the defendant. It has also been found by the learned Appellate Judge that the defendant is an employee of the bank and was subjected to various transfers. However he had no premises of his own and that his mother used to stay in the suit premises. On appreciation of evidence, therefore, the Appellate Court found both the points against the plaintiff i.e. regarding bonafide requirement as well as against the non user of the premises by the defendant. Aforesaid finding is within the realm of appreciation of evidence and this court while exercising revisional jurisdiction cannot reappreciate the evidence treating the revision as if it is a regular appeal. On appreciation of evidence both the courts have found that the question of bonafide requirement of the plaintiff is not believable. Thus I find no infirmity or error of law in the orders passed by the courts below which is required to be corrected by this court in revisional jurisdiction. Similarly regarding non user of the property it has been found that the old mother of the defendant is staying in the suit

premises. Said finding is therefore, not required to be interfered with on the aforesaid ground. The order of the appellate court confirming the decree of the Trial Court is not required to be interfered with by this court. This revision application is devoid of any merits and the same is required to be dismissed. Revision Application is accordingly dismissed. Rule discharged. No order as to costs.

(P.B.Majmudar.J)

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